

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION

FREES, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 3:06-CV-307
	)	
PHIL MCMILLAN, <sup>1</sup>	)	
	)	
Defendant.	)	

**MEMORANDUM AND ORDER**

On June 2, 2006, Southeast Building Solutions, Inc. (“Southeast”) filed a motion to quash a subpoena issued to it by Frees, Inc. (“Frees”). The motion was referred to United States Magistrate Judge C. Clifford Shirley for his consideration and determination, and the magistrate judge held a hearing on August 10, 2006.

By memorandum and order dated September 15, 2006, Magistrate Judge Shirley granted the motion to quash in part, finding the scope of the subpoena to be overly broad and unduly burdensome at this time. [Doc. 15]. The magistrate judge directed the parties to commence a process of tiered discovery. Southeast filed a motion to reconsider [doc. 11], which the magistrate judge denied. [Doc. 15].

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<sup>1</sup> The proper spelling of defendant’s name is “McMillian.” However, in the motion to quash that initiated the instant case, movant Southeast Building Solutions, Inc. employed the spelling “McMillan.” As is its practice, the court will adhere to the original caption and spelling presented to it by the filing party.

Now before the court are Southeast's "Objections to the Magistrate Judge's Memorandum and Order and Motion to Stay the Order." [Doc. 16]. Frees has filed a response [doc. 18] to the objections. Southeast has moved to strike Frees's response [doc. 19], and Frees has responded [doc. 23] to that motion. Lastly, Frees has moved [doc. 21] for leave to file a supplemental brief, to which Southeast has submitted a response. [Doc. 22].

The present dispute arises from a Computer Fraud and Abuse Act case pending in the United States District Court for the Western District of Louisiana captioned *Frees, Inc. v. McMillan*, case no. 5:05-cv-1979. The facts underlying the Louisiana litigation are well-summarized in the magistrate judge's memorandum and order and need not be repeated herein. In sum, Frees alleges that its former employee McMillian transferred certain proprietary computer information to his present employer Southeast.

Southeast does "not necessarily disagree[]" [doc. 16, p. 5] with a tiered structure of discovery but objects to the two projects (Monterey Boats and Southport Boats) that are the subject of the magistrate judge's order. Southeast has submitted affidavits supporting its position that no specific information regarding either project could have been present on Frees's computers. In response, Frees points to the possibility of a certain degree of information carry-over between Monterey jobs. In addition, the court notes that Frees seeks discovery regarding the potential theft of more general proprietary files from its computers, such as Autocad drawings and components of its "Cookbook" program. The tiered discovery ordered by the magistrate judge is pertinent to these more general issues

regardless of the amount of work Frees performed on specific Monterey or Southport projects.

The court accordingly finds the magistrate judge's narrowly-tailored ruling to be neither clearly erroneous nor contrary to law. *See* Fed. R. Civ. P. 72(a). Southeast's objections are accordingly **OVERRULED**. The schedule of tiered discovery ordered by the magistrate judge is no longer stayed [doc. 17], and Southeast **SHALL** produce the information and documents previously ordered by the magistrate judge no later than November 6, 2006.

Southeast's motion to strike [doc. 19] has been considered and is **DENIED**. The court will not require Frees to essentially prove the allegations of its complaint at this early stage of discovery. Frees's motion for leave to file a supplemental brief [doc. 21] has also been considered and is also **DENIED**. The court does not at this time find the allegations contained therein to be pertinent either to Southeast's motion to quash or to its objections.

**IT IS SO ORDERED.**

ENTER:

s/ Leon Jordan  
United States District Judge